

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2006

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.127 and 128 of 2003

The Commissioner of Income Tax,
Chennai.

...Appellant in both the cases

Vs

M/s.East Coast Constructions & Ind. Ltd.
Chennai.

...Respondent in both the cases

Appeals under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras, 'B' Bench in I.T.A. Nos.1720 and 1721/Mds/2002 dated 13.03.2003, for the assessment years 1997-98 and 1998-99. ITAs No.84/2000-2001 dated 21.8.2002, and 109/2001-2002, dated 21.8.2002 respectively on the file of the Commissioner of Income Tax, Appeals XI, Chennai-34 against G.I.No.1-E/97-98 dtd 24.3.2000 and G.I.No.1-E/98-99, dated 31.5.2001 respectively on the file of the Joint Commissioner of Income Tax, Spl. Range V, Chennai -34.

For Appellant : Mr.J.Narayanaswamy

For Respondent : Mr.Ramachandran, Senior Counsel
for Ms.Anitha Sumanth

JUDGMENT

(Judgment of the Court was delivered by P.P.S.Janarthana Raja, J.)

The present appeals are filed under Section 260-A of the Income Tax Act, 1961 by the Revenue, in I.T.A. Nos.1720 and 1721/Mds/2002 dated 13.03.2003, passed by the Income Tax Appellate Tribunal, Madras "B" Bench raising the following substantial question of law.

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that moneys retained by the contractee, as a percentage of the bills raised to be paid after the contract is completed is to be treated as income only when the moneys are actually received, even though the appellant is following a mercantile system of accounting?"

2. The facts leading to the above question of law are as under:

i) The relevant Assessment years are 1997-98 and 1998-99 and the accounting years ended on 31.03.1997 and 31.03.1998, respectively. The assessee is a company, carrying on business of construction in various places. The assessee filed a Return of income. It appears that 10% of the contract amount is retained by the parties as retention money and would pay after the completion of the contract. The Assessing Officer had included the retention money for the purpose of computing the total income, on the ground that since the assessee followed the mercantile system of accounting, he ought to have offered the retention money for assessment.

ii) Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who confirmed the addition made on the ground that, where mercantile system is followed, the income accrued, though not received, is liable to income tax. Aggrieved by that order, the assessee filed an appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal allowed the appeal holding that the retention money was accrued to the assessee only after completion of the contract and therefore, cannot be included in the total income for the assessment years in consideration, since the contract was not yet completed.

iii) The learned counsel appearing for the Revenue contended that the retention money accrues only when the contract is complete. He also further submitted that the said retention money had accrued on the ground that the work relating to it had already been done and billed. It is also further submitted that the main feature of the mercantile system of accounting is that, regardless of whether an amount is received or not, it is accounted as a receipt as soon as it had accrued. In the case of retention money, the amount already billed, but not received, should be treated as income for the period when it had been billed. The learned counsel for the respondent submitted that such money will be realised only when the customer is satisfied about the completion of the work entrusted to the appellant. The assessee had treated the amount as a contingent amount receivable and offered the same only on receipt basis.

3. We heard the arguments of the learned counsel. 10% of the retention money was withheld by the parties on the ground that the amount would be realised only after completion of the contract. The said amount is payable after completion of the contract. The said retention money accrues to the assessee only after the completion of the contract. The said amount is payable to the assessee only after inspection by the other party. If the other party is not satisfied with the work done by the assessee, the said retention money is not payable. The assessee is entitled to receive the retention money after completion of the contract. On the date of bills, no enforceable liability had accrued or arisen. When the assessee has no right to receive the same by virtue of the contract between the parties and the assessee also has no right to enforce for payment, it cannot be said that the right to receive payment of the remaining 10% of the value of job done, accrues as soon as it is completed. Recently, we have also considered the similar issue in another Assessee's case in Tax Case No.1428 of 2005 dated 05.01.2006 wherein it was held that the retention money is realisable only if the customer is satisfied about the completion of the work entrusted to the assessee and hence, it is taxable only on receipt basis. The Calcutta High Court, in the case of C.I.T. Vs. M/s.Simplex Concrete Piles (India) Pvt. Ltd. (179 ITR 8) at Page No.15, held as follows:

"Having regard to the facts and circumstances of the case, we are of the view that on the terms and conditions of the contract as examined by the Tribunal, it cannot be held that either 10 per cent or 5 per cent, as the case may be, being the retention money, became legally due to the assessee on the completion of the work. Only after the assessee fulfils the obligation under the contract, that the retention money would be released and the assessee would acquire the right to receive such retention money. Therefore, on the date when the bills were submitted, having regard to the nature of the contract, no enforceable liability has accrued or arisen and, accordingly, it cannot be said that the assessee had any right to receive the entire amount on the completion of the work or on the submission of bills. The assessee had no right to claim any part of the retention money till the verification of satisfactory execution of the contract."

The facts in the instant case are more or less similar to the above Calcutta High Court Judgment and we agree with the same.

4. In view of the foregoing conclusions, we find no error in the order of the Tribunal and requires no interference. Hence, we answer the question in favour of the assessee, against the Revenue and the above tax cases are dismissed. No costs. Consequently, the connected TCMP No.180 of 2003 is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. THE ASST. REGISTRAR,
INCOME TAX APPELLATE TRIBUNAL,
RAJAJI BHAVAN, BESANT NAGAR,
CHENNAI -90.

2. THE COMMISSIONER OF INCOME
TAX, CHENNAI.

3. THE JOINT COMMISSIONER OF
INCOME TAX ,
SPL. RANGE V, CHENNAI -34.

4. THE COMMISSIONER OF INCOME -
TAX, (APPEALS) XI, CHENNAI -34.

+1cc to Mrs.Pushya Sitaraman, Advocate Sr 2600
+1cc to Mrs. Anita Sumanth, Advocate Sr 2137

MM (CO)
km/5.6.

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